**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT**

**JAIPUR BENCH, JAIPUR**

S.B. Sales Tax Revision Petition No.29/2004

M/s. Balaji Enterprises, Jaipur
Vs.
Asstt. Commissioner, C.T.D., Gangapur City

01.08.2007

**Hon'ble Dr. Vineet Kothari, J.**

Mr.Nitin Jain for the petitioner-assessee.
Mr.Amit Ratnawat for Mr.R.B. Mathur for the respondent-revenue.

**REPORTABLE**

1. Heard learned counsels for the parties.

2. This revision petition is directed against the order of Rajasthan Tax Board, Ajmer dated 10.7.2003 whereby the Tax Board upheld the imposition of the penalty under Section 78(5) of the Rajasthan Sales Tax Act, 1994 (for short 'the Act'). The said penalty was imposed by the learned assessing authority vide order dated 22.1.1999 on checking of the goods i.e. Soyabeen Oil in Tanker No.RSG-2601, which was purchased by the assessee – M/s. Balaji Enterprises, Jaipur from M/s. Ashok Trading Company, Satna (MP) vide their Bill No.115 dated 9.1.1999 and were carried in the said Tanker along with GR No.1050 dated 9.1.1999 of M/s. N.K. Transport Company, Jaipur along with prescribed declaration Form No.ST18A.

While, the goods were in transit, the assessee entered into a contract for sale of goods in question i.e. soyabean oil with one M/s. Govind Oil Mill, Gangapurcity. However, since the said M/s. Govind Oil Mill refused to have purchased the goods in question from the assessee and also because with the goods found at the time of checking, was only one Challan No.125 dated 11.1.1999 issued by the assessee – Firm was found with aforesaid three documents, without any sale bill of assessee - Firm, the penalty in question was imposed upon the petitioner assessee. The learned assessing authority further found that no entry in the books of accounts for the said sale in question was made by the assessee.

3. Learned Deputy Commissioner (Appeals) rejected the first appeal of the assessee, so also the Tax Board upholding the order of first appellate authority and imposition of the penalty of Rs.84,550/- @ 20% of the value of goods, was upheld.

4. The explanation of the assessee before the appellate authorities was that these goods were sold while in transit in accordance with Section 6(2) of the Central Sales Tax Act, 1956 and since the purchaser – M/s. Govind Oil Mill, Gangapurcity refused to purchase these goods, the same were sold to another dealer M/s.

Suresh Chand Gaurav Kumar, Guhana and the bill No.126 was made in favour of the said another purchaser after charging due C.S.T. of 2% applicable. The Tax Board has not dealt with the said contention and explanation of the assessee at all.

5. It appears that since the goods were first sold to M/s. Govind Oil Mill while they were still in transit, but since the said purchaser refused to purchase the goods in question, they were sold to another dealer M/s. Suresh Chand Gaurav Kumar after charging due CST of 2%. No entries in this regard were made in the books of accounts because the sale was yet not complete at the time of checking and in support of the transit of goods within the State, the challan No.125 only was issued by the petitioner assessee.

6. The scope of Section 78(2) of the Act can be understood by reproducing the said provision, which reads as under:-

> "78(2). The driver or the person incharge of a vehicle or carrier or of goods in movement shall -
>
> (a) Carry with him a goods vehicle record including "challans" and "bilties", bills of sale or dispatch memos and prescribed declaration forms;
>
> (b) Stop the vehicle or carrier at every check-post, and while entering and leaving the limits of the State, bring and stop the vehicle at the nearest check-post, set-up

under sub-section (1);

(c) produce all the documents including prescribed declaration forms relating to the goods before the Incharge of the check-post;

(d) give all the information in his possession relating to the goods; and

(e) allow the inspection of the goods by the Incharge of the check-post or any other person authorized by such Incharge."

7. Admittedly, when the goods and vehicle were checked by the assessing authority, the documents produced by the driver of the said vehicle for the verification of the assessing authority were Bill No.115 dated 9.1.1999 of M/s. Ashok Trading Company, Satna (M.P.) Bilty No.1050 dated 9.1.1999 of M/s. N.K. Transport Company, Jaipur and declaration in Form No.ST18A. There is nothing in the orders of all the three authorities below, which indicates that any enquiry was held into the genuineness of these three documents produced by the driver of the vehicle. As a matter of fact, the production of these three documents satisfies the requirement of Section 78(2)(a) and (c) of the Act. The scope of Section 78(2) read with Section 78(5) was restricted and limited to the extent of verification of these three documents in support of the transit of goods alone. The assessing authority could not have pursued and followed up the entire transaction of the sale of goods by transfer of documents of title under Section 6(2) of the

C.S.T. Act and even assuming for argument sake that it could be so followed, the doubt raised on the genuineness of the challan and blank bills Nos. 125 to 152 found in the bill book of the assessee was wholly uncalled for. Similarly, the non-recording of the sale in the books of accounts either in favour of M/s. Govind Oil Mill or subsequent purchaser at the time of checking on 12.1.1999 was of no consequence as the sale was not yet complete. No enquiry was made from the subsequent purchaser M/s. Suresh Chand Gaurav Kumar, to verify the actual transaction of sale and coupled with the fact of due C.S.T. having being charged by the assessee. The assessee is entitled to sell the goods by transfer of documents of title to the goods while the goods are in transit under Section 6(2) of the C.S.T. Act. The documents which accompanied the goods and vehicle were not found to be fake or forged in any manner by the assessing authority. The penalty under Section 78(5) of the Act, therefore, cannot be sustained in the present case.

8. In view of this, it appears that the imposition of the penalty and confirmation of the same by both the appellate authorities below is unsustainable in the eye of law. Consequently, this revision petition is allowed and the orders passed by all the three authorities below are set aside. The amount of penalty, if already recovered from

the assessee, shall be refunded back to the assessee with interest in accordance with the law forthwith.

9. Revision petition is allowed. No order as to costs.

[**Dr. Vineet Kothari**],**J.**

S.S.**Jr.P.A.**